

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Anne Marie Razza et al.
Application No.: 10/687,366
Filed: October 15, 2003
Title: METHOD AND SYSTEM FOR SEARCHING FOR TRAVEL
ITINERARIES WITH FLEXIBLE TRAVEL DATES
Examiner: Tonya S. Joseph
Art Unit: 3628
Confirmation No. 9270

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REPLY BRIEF OF APPELLANT

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I. Summary of Examiner's Answer

In the Examiner's Answer, the Examiner did not raise any new rejections of the currently pending claims. The Examiner merely introduced new remarks under the section "Response to Argument," which begins on page 18 of the Examiner's Answer, in response to Appellant's Appeal Brief filed September 14, 2010.

II. Appellant's Remarks in Response to the Examiner's Answer

Appellant has appealed the final rejection of claims 1-9, 11-20, 29, 30, and 32-41.

Initially, Appellant submits that all of the previous remarks presented in Appellant's Appeal Brief remain valid and substantiated, and such remarks should be considered in combination with the additional remarks presented herein. In the Examiner's Answer, the Examiner provided general remarks that may apply to more than one claim. Thus, Appellant will address the remarks in connection with each claim with which they relate.

A. Summary

In the Final Office Action, the Examiner rejected claims 1-6, 9, 11-16, 19, 20, 29, 30, and 32-41 under 35 U.S.C. §103(a) as being unpatentable over Daughtrey in view of Kwoh, and rejected claims 7, 8, 17, and 18 as being unpatentable over Daughtrey in view of Kwoh and further in view of Keller. Appellant has previously argued, and continues to assert, that this purported combination of references still does not teach or suggest all of the recited claim limitations in the present application.

As discussed in detail in Appellant's Appeal Brief, Appellant submits that even if Daughtrey, Kwoh, and Keller could be combined in the manner alleged by the Examiner, which Appellant does not concede is proper, the purported combination still would not teach or suggest all of the recited

claim limitations. For example, the purported combinations still would not teach or suggest, *inter alia*:

Claims 1-9, 11, 12, and 34

- 1) “simultaneously providing a plurality of flexible date search options to a user”;
- 2) “user entered trip date interval comprising a user entered departure date and a user entered return date”;
- 3) “a user entered trip date interval and a user entered trip length”;
- 4) “wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date”;
- 5) “receiving a search option selection from a user”; or
- 6) “requesting travel date information from the user based on the search option selection”;

Claims 13-20 and 35-37

- 1) “simultaneously providing a plurality of flexible date search options to a user”;
- 2) “user entered trip date interval comprising a user entered departure date and a user entered return date”;
- 3) “a user entered trip date interval and a user entered trip length”;
- 4) “wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date”;
- 5) “receiving a search option selection from a user”; or
- 6) “requesting travel date information from the user based on the search option selection”;

Claims 29 and 38-40

- 1) “means for receiving a flexible date search option selection from a user, the means comprising simultaneously providing a plurality of flexible date search options to a user”;
- 2) “user entered trip date interval comprising a user entered departure date and a user entered return date”;
- 3) “a user entered trip date interval and a user entered trip length”;

- 4) “wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date”;
- 5) “means for receiving a search option selection from a user”; or
- 6) “the means comprising requesting travel date information from the user based on the flexible date search option selection”;

Claims 30, 32, 33, and 41

- 1) “the trip date range comprising a user specified earliest departure date and a user specified latest return date”;
- 2) “the travel date information comprising a trip date range...and a trip length”; or
- 3) “the trip length is less than the trip date range”.

The Examiner’s remarks presented in the Examiner’s Answer will be address as they relate to each independent claim and their dependent claims.

B. Claims 1-9, 11, 12, and 34

1. Section A of the Examiner’s Answer

On pages 18 and 19 of the Examiner’s Answer, the Examiner continues to contend that the “Show Advanced Options” feature of Daughtrey is another flexible date search option. As stated in Appellant’s Appeal Brief, “Show Advanced Options” is not another flexible date search option. Rather, it is a drop down menu including additional trip lengths for the sole “Flexible Dates” search option associated with tab 41e in Daughtrey. The Examiner acknowledges on page 19, lines 4 and 5 of the Examiner’s Answer that selection of the “Show Advanced Options” feature on tab 41e will provide “a drop down menu with various choices such as ‘one weekend’, ‘one long weekend’, and ‘weekend to weekend’.” These choices are clearly additional trip lengths intended to replace the trip lengths available in window 42 in Fig. 2 of Daughtrey. Thus, as substantiated by the Examiner’s own remarks, “Show Advanced Options” provides a user with additional trip lengths from which a

user may choose. The “Show Advanced Options” feature is not another flexible date search option as recited in independent claim 1.

In addition, independent claim 1 recites “a plurality of flexible date search options” and “a user entered trip length”. As indicated above, the “Show Advanced Options” feature includes additional trip lengths. Since independent claim 1 recites both “a plurality of flexible date search options” and “a user entered trip length”, the trip lengths available via the “Show Advanced Options” feature cannot be both flexible date search options and trip lengths. The Examiner is attempting to rely on the available trip lengths of Daughtrey as both flexible date search options and trip lengths. Clearly, this is improper. A feature of the prior art cannot be used to satisfy two different limitations of a claim.

On page 19, last paragraph of the Examiner’s Answer, the Examiner contends that Appellant is arguing that independent claim 1 recites “simultaneously displaying” instead of “simultaneously providing”. Appellant respectfully submits that the Examiner is incorrect. Appellant argued the claim language as recited. That is, Appellant argued that independent claim 1 recites “simultaneously providing” and that Daughtrey does not teach or suggest this limitation of independent claim 1. Appellant respectfully submits that even if Appellant was arguing “simultaneously displaying” rather than “simultaneously providing”, which Appellant submits it is not, Daughtrey doesn’t display or provide a plurality of flexible date search options. Rather, Daughtrey discloses providing or displaying a single flexible date search option and a plurality of trip lengths.

Continuing, reference is made to page 20, lines 3-6 of the Examiner’s Answer where the Examiner herself indicates that the “Show Advanced Options” feature includes “...choices for a layover length such as ‘one-way ticket only’, ‘one-day business trip’, ‘two-day business trip’, ‘one

weekend', 'one long weekend'..." (emphasis added by Appellant). Thus, the Examiner herself refers to the "Show Advanced Options" as trip lengths.

2. Section B of the Examiner's Answer

In Section B of the Examiner's "Response to Argument", the Examiner addresses some of Appellant's remarks establishing that Daughtrey teaches away from a combination with Kwoh.

Initially, Appellant wishes to correct a mischaracterization presented by the Examiner. In the heading of Section B, the Examiner recites "[t]he combination of Daughtrey and Kwoh does not teach away from the recited claim language". Generally speaking, in patent prosecution the argument of "teaching away" is used in connection with two prior art references and whether or not the disclosures of the two references teach away from a modification or combination of the two disclosures. In such "teaching away" arguments, the claim language at issue is not used to establish a teaching away. Rather, only the two prior art references are discussed and relied upon. In connection with the present appeal, Appellant asserted in the Appeal Brief that the disclosure of Daughtrey teaches away from a combination or from being modified with the disclosure of Kwoh. The Examiner's heading of Section B of the Examiner's Answer improperly states that the purported combination of Daughtrey and Kwoh teaches away from the claim language of independent claim 1. After reviewing the Examiner's remarks in Section B, Appellant believes the heading of Section B of the Examiner's Answer was intended to state that the disclosure of Daughtrey does not teach away from combining it with the disclosure of Kwoh.

Regardless of the heading of Section B, the Examiner continues to deemphasize the explicit disclosure of Daughtrey and fails to consider the references as a whole. "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 U.S.P.Q. 303

(Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984); MPEP § 2141.02. It is improper to combine references where the references teach away from their combination. In re Grasselli, 713 F.2d 731, 743, 218 U.S.P.Q. 769, 779 (Fed. Cir. 1983); MPEP § 2145(X)(D)(2).

In Section B of the Examiner's Answer, the Examiner herself presents the criteria required to establish a prior art reference teaching away from a combination or a modification thereof with a second prior art reference. Particularly, the Examiner states "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed..." In re Fulton, 391, F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004)" (emphasis added by Appellant). Thus, if Daughtrey criticizes, discredits, or otherwise discourages its combination or modification with Kwoh, then Daughtrey teaches away from a combination or modification with Kwoh.

Appellant believes sufficient evidence was submitted in Section VII(A)(1)(b) of the Appeal Brief to substantiate that Daughtrey teaches away from Kwoh. However, in an effort to address the Examiner's continued assertion of combining Daughtrey with Kwoh, Appellant will again present the remarks to establish that Daughtrey teaches away from a combination with Kwoh in the manner purported by the Examiner.

Appellant respectfully submits Daughtrey supports an assertion of teaching away. First, the purpose of the Daughtrey invention is to decrease the burden on a search engine. Second, the citation in paragraph [0025] of Daughtrey explicitly states an example of when a search engine is overburdened and said example indicates that entry of return dates overburdens a search engine. Third, the explicit disclosure of tab 41e of Daughtrey does not allow a user to enter a return date and Daughtrey specifically states that removing this limitation and having the user enter a trip length instead reduced the burden on the search engine tenfold, which is the recited purpose of the

invention in Daughtrey. These undeniable facts presented in Daughtrey clearly establish that Daughtrey criticizes, discredits, or otherwise discourages a user entered return date. In addition, these three undeniable facts establish that it is the Examiner who mischaracterizes the disclosure of Daughtrey. As is required in W.L Gore & Associates, Inc. v. Garlock, Inc (see above), “[a] prior art reference must be considered in its entirety, i.e., as a whole...” and, therefore, a determination of a teaching away should rely on the totality of the evidence and the entire disclosure of the reference, rather than on one sentence or word in the reference as was done by the Examiner.

In the Appeal Brief, Appellant presented arguments that a combination of Daughtrey and Kwoh would present a combination unsatisfactory for its intended purpose. The Examiner failed to address these arguments in the Examiner’s Answer. Thus, Appellant can only assume that the Examiner concedes the validity of this argument.

Finally, in Section B, the Examiner purports Appellant conceded that Daughtrey and Kwoh “do teach” the recited limitations of independent claim 1 (see lines 3-5 of Section B). Appellant respectfully submits that no such concession was presented in the Appeal Brief. Appellant never stated that Daughtrey and Kwoh teach all the recited limitations of independent claim 1. The Examiner’s allegation did not include any specific reference to the Appeal Brief where such an allegation is supported. Appellant submits no such reference to the Appeal Brief was made because the Appeal Brief does not include a concession that Daughtrey and Kwoh disclose the claim limitations of independent claim 1. Accordingly, this allegation presented by the Examiner should be ignored.

3. Section C of the Examiner’s Answer

This section of the Examiner’s Answer perplexes Appellant. Particularly, the Examiner continues to assert that Daughtrey teaches a user entered trip date interval (see third sentence of

Section C), but also continues to acknowledge that Daughtrey fails to teach or suggest a user entered return date. Claim 1 clearly recites that “the user entered trip date interval compris[es] a user entered departure date and a user entered return date...” (emphasis added by Appellant). Thus, in order to disclose a user entered trip date interval, Daughtrey must disclose both a user entered departure date and a user entered return date. The Examiner has already acknowledged that Daughtrey does not disclose a user entered return date. In other words, the Examiner’s own remarks belie her allegation that Daughtrey discloses a user entered trip date interval.

Also in this section, the Examiner presents a trivial, thinly veiled sarcastic remark that seems unnecessary. Particularly, the Examiner recites “[c]ontrary to Appellant’s assertions, the concept of entering user trip dates was not invented by Appellant...” Appellant respectfully submits that the Examiner, again, has mischaracterized Appellant’s remarks. Appellant never asserted that they invented the concept of entering trip dates. Rather, Appellant asserts that they invented the subject matter of independent claim 1, which includes limitations in addition to “a user entered trip date interval”. The Appellant argued many of the claim limitations of independent claim 1 that were not present in the prior art. The limitation of “a user entered trip date interval” is only one of the many limitations of independent claim 1 and was argued by Appellant because the basis of rejection relied upon by the Examiner was improper. Had the Examiner presented a legitimate rejection, then there would have been no need to argue this limitation.

Further, in Section C, the Examiner merely repeats allegations that the claimed “trip length” being less than a “user entered trip date interval” is mere optimization of ranges, but fails to address Appellant’s arguments presented in the Appeal Brief that establish the general conditions of independent claim 1 are not present in Daughtrey and Kwoh, and that the “trip length” being less than a “user entered trip date interval” is not a range. The claims recites that X must be less than Y,

a definitive statement, not a range. There are no overlapping ranges in the claim and the cited prior art (the claims recites X is less than Y and the cited prior art discloses X equals Y), therefore, there are no ranges to optimize. Since this was not addressed by the Examiner, Appellant can only assume that such arguments are valid and sufficient to rebut the Examiner's allegations.

In addition, the Examiner states that "Applicant's original specification as filed does demonstrated [sic] the criticality of the user entered trip length is less [than] the trip date range date..." (emphasis added by Appellant). While Appellant does not believe establishment of criticality is required for this limitation of claim 1, the Examiner clearly does. However, if the Examiner believes the original disclosure does establish the criticality of such a limitation, why then does the Examiner take issue with this claim limitation? This is yet another example of perplexing statements presented by the Examiner. If, on the other hand, this is a typographical error presented by the Examiner and, instead, the Examiner intended this statement to say the original disclosure "does not" establish the criticality of such a limitation, Appellant respectfully disagrees. As indicated on page 20 of the Appeal Brief:

As is clear from the present application, the user entered trip length is the length of time that the user will be staying at their destination (e.g. 1 week). This period of time must be less than the time between a possible departure date and a possible return date, or the search would not make any sense. How could a user want to leave on September 1 and return on September 3, but want to stay for 1 week?...As discussed above, having a trip length less than a period of time between the user entered departure date and the user entered return date is important because it enables multiple pairs of departure dates and return dates to be determined. If the travel length is equal to the time period between a departure date and a return date, which is the case in Daughtrey and Kwoh (Examiner admits this on page 7, lines 13-14 of the Final Office Action), then only one date pair is determined and there is no flexible date search (flexible date search is the purpose of the present invention). Not only do Daughtrey and Kwoh fail to teach or suggest this limitation of independent claim 1, Daughtrey and Kwoh would have no way of determining multiple date pairs as claimed in independent claim 1 because they only have one departure date and one return date. For at least this reason, this limitation of independent claim 1 is critical.

For at least these additional reasons, the Examiner's basis for rejecting this limitation of independent claim 1 is improper.

Further yet, in Section C of the Examiner's Answer, the Examiner contends that Appellant argued "that the 'GO' button only initiates a fare based on the number of adults, seniors, youths, children and infants..." (emphasis added by Examiner). Appellant respectfully submits that the Examiner has isolated a single sentence from a lengthy argument and interpreted the isolated sentence out of context with the surrounding remarks. Reference is made to page 25, first paragraph of the Appeal Brief for the origin of the Examiner's contention. With a reading of this paragraph, one will easily ascertain that Appellant used the phrase "such as", which is a well known phrase in English grammar to introduce examples and, in no way, can be interpreted to be a restrictive or exclusionary phrase. The Examiner's mischaracterization is substantiated by her use of the word "only" in the Examiner's above statement. Appellant never argued that selecting the "GO" button "only" initiates a fare based on the number of adults, seniors, youths, children and infants. Rather, as can be clearly seen in the Appeal Brief, the Appellant states "paragraph [0032] merely represents selecting a 'Go' button that initiates a fare search based on entered criteria such as number of adults, seniors, youths, children, infants" (emphasis added by Appellant). Thus, the Examiner's mischaracterization of the Appeal Brief should be ignored.

The Examiner continues in Section C of the Examiner's Answer by stating "[f]urthermore, the cited portions of Daughtrey have shown that contrary to Appellant's assertions, the user of the system of Daughtrey does indeed make a search option selection" (emphasis added by Appellant). To what cited portions of Daughtrey is the Examiner referring? The Examiner provides no specific citation to support this allegation. It is clear from Section VII(A)(1)(e) of the Appeal Brief that Daughtrey does not teach or suggest "receiving a search option selection from the user..." for a

variety of reasons. One such reason is that Daughtrey does not disclose a plurality of flexible date search options and, therefore, cannot receive a selection if there is not a plurality of flexible date search options from which to select. The Examiner argues that a plurality of options are not required in order to make a selection. However, in the context of independent claim 1, you must have a plurality of flexible date search options from which to select in order to receive a selection of one of the search options. The Examiner continues to ignore the context of the claim surrounding the claim limitation at issue in order to make an improper rejection of the claim limitation. For a more detailed representation of this argument, reference is made to the above-identified section of the Appeal Brief. The Examiner fails to address this argument in the Examiner's Answer. Thus, Appellant can only assume that the Examiner concedes the validity of this argument.

Finally, the Examiner addresses Appellant's inclusion of a telephone transcript as Appendix A of the Appeal Brief. Particularly, the Examiner attempts to deemphasize and attack Appellant's inclusion of said transcript, particularly because the transcript is contrary to and weakens the Examiner's current position. Appellant included the transcript to ensure that the prosecution history of the present application was complete and that the Appeal Board had all relevant materials in their possession when deciding the case. Additionally, Appellant included the transcript as a typical example of the inconsistent examination provided by the Examiner and Supervisory Examiner in this case. As can be expected, such inconsistent examination has been a burden on Appellant because Appellant took considerable action to address and resolve the position taken by the Examiner. Then, the Examiner changed positions, thereby nullifying the considerable and good faith action taken by Appellant to advance prosecution of the present application and requiring Appellant to perform considerably more action to address the new position.

4. Conclusion for Claims 1-9, 11, 12, and 34

For at least these reasons and the reasons presented in the Appeal Brief, Appellant respectfully submits that the Examiner continues to fail to present a *prima facie* case of obviousness for claims 1-9, 11, 12, and 34 since the references relied upon by the Examiner, either alone or in combination, fail to teach or suggest all the recited claim limitations.

C. Claims 13-20 and 35-37

1. Section A of the Examiner's Answer

For the sake of brevity, the remarks presented above in Section II(A)(1)(a) to address the Examiner's remarks presented in Section A of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 13.

2. Section B of the Examiner's Answer

For the sake of brevity, the remarks presented above in Section II(A)(1)(b) to address the Examiner's remarks presented in Section B of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 13.

3. Section C of the Examiner's Answer

For the sake of brevity, the remarks presented above in Section II(A)(1)(c) to address the Examiner's remarks presented in Section C of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 13.

4. Conclusion for Claims 13-20 and 35-37

For at least these reasons and the reasons presented in the Appeal Brief, Appellant respectfully submits that the Examiner continues to fail to present a *prima facie* case of obviousness for claims 13-20 and 35-37 since the references relied upon by the Examiner, either alone or in combination, fail to teach or suggest all the recited claim limitations.

D. Claims 29 and 38-40**1. Section A of the Examiner's Answer**

For the sake of brevity, the remarks presented above in Section II(A)(1)(a) to address the Examiner's remarks presented in Section A of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 29.

2. Section B of the Examiner's Answer

For the sake of brevity, the remarks presented above in Section II(A)(1)(b) to address the Examiner's remarks presented in Section B of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 29.

3. Section C of the Examiner's Answer

For the sake of brevity, the remarks presented above in Section II(A)(1)(c) to address the Examiner's remarks presented in Section C of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 29.

4. Conclusion for Claims 29 and 38-40

For at least these reasons and the reasons presented in the Appeal Brief, Appellant respectfully submits that the Examiner continues to fail to present a *prima facie* case of obviousness for claims 29 and 38-40 since the references relied upon by the Examiner, either alone or in combination, fail to teach or suggest all the recited claim limitations.

E. Claims 30, 32, 33, and 41**1. Section A of the Examiner's Answer**

For the sake of brevity, the remarks presented above in Section II(A)(1)(a) to address the Examiner's remarks presented in Section A of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 30.

2. Section B of the Examiner's Answer

For the sake of brevity, the remarks presented above in Section II(A)(1)(b) to address the Examiner's remarks presented in Section B of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 30.

3. Section C of the Examiner's Answer

For the sake of brevity, the remarks presented above in Section II(A)(1)(c) to address the Examiner's remarks presented in Section C of the Examiner's Answer apply *mutatis mutandis* as they relate to independent claim 30.

4. Conclusion for Claims 30, 32, 33, and 41

For at least these reasons and the reasons presented in the Appeal Brief, Appellant respectfully submits that the Examiner continues to fail to present a *prima facie* case of obviousness for claims 30, 32, 33, and 41 since the references relied upon by the Examiner, either alone or in combination, fail to teach or suggest all the recited claim limitations.

III. Conclusion

Appellant respectfully submits that claims 1-9, 11-20, 29, 30, and 32-41 are patentable over the references of record and are in condition for allowance. Therefore, Appellant respectfully requests reversal of the Examiner's rejections and issuance of a Notice of Allowance.

Respectfully submitted,

Dated: January 24, 2011

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